



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on April 17, 2001

NOTICE OF ACTION TAKEN -- DOCKET OST-2001-8605 -- 5

CORRECTED COPY¹

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **Aviones de Oriente, Avior, C.A.**

Date Filed: January 2, 2001

Relief requested: Exemption from 49 U.S.C. 41301 to conduct (1) scheduled foreign air transportation of persons, property and mail between Barcelona, Venezuela, and Miami, FL; and (2) charter foreign air transportation of persons, property and mail between any points in Venezuela and any points in the United States, directly or via intermediate points in other countries, with or without stopovers, and beyond; and other charters pursuant to 14 CFR 212 of the Department's regulations, pursuant to a wet-lease arrangement with an authorized Part 121 or Part 129 carrier.

If renewal, date and citation of last action: New authority

Applicant representative: Malcolm Bengé 202-298-8660

Responsive pleadings: Aeropostal Alas de Venezuela, C.A., a foreign air carrier of Venezuela, filed an answer in opposition, stating that Avior's homeland license does not authorize large aircraft scheduled international service, and that it is unclear that the license authorizes large aircraft international charter operations. Aeropostal also alleges that Avior has been holding out and operating Barcelona-Miami service without Department authority.

Avior filed a reply stating that, as it pointed out in its application, it is waiting for the Venezuelan government to license it for international scheduled service, but that its current license clearly authorizes it to conduct the proposed charter services. It states that the lack of scheduled authority should not prevent the Department from granting that portion of the application requesting charter authority, while deferring action on the matter of scheduled operations until the requisite homeland license is provided. Avior further states that, contrary to Aeropostal's allegations, it is not holding out or operating Barcelona-Miami service; that the charter program Aeropostal cites was the subject of a prospectus accepted by the Department, with Miami Air International as the direct air carrier, and that any reference to Avior in advertisements was in the context of connecting flights from Barcelona to domestic Venezuelan points.

DISPOSITION

Action: Approved in part, Remainder deferred

Action date: April 17, 2001

Effective dates of authority granted: April 17, 2001 - April 17, 2002

Remarks: We are granting Avior authority to conduct charter foreign air transportation of persons, property and mail between any points in Venezuela and any points in the United States, directly or via intermediate points in other countries, with or without stopovers, and beyond; and other charters pursuant to 14 CFR 212 of the Department's regulations, pursuant to a wet-lease arrangement with an authorized Part 121 or Part 129 carrier. Avior may not conduct U.S. operations with its own aircraft and crews without further order of the Department.² We find that reciprocity with Venezuela is adequate to support grant of this authority. We also find, based on the record, that the carrier appears to be substantially owned and effectively controlled by citizens of Venezuela, financially and operationally qualified, and properly licensed to conduct the proposed charter operations. We are, however, deferring action on that portion of Avior's application requesting authority to conduct scheduled Barcelona-Miami operations until it is properly licensed for

¹ In keeping with our policy in granting Venezuelan carriers charter authority, we will require Avior to obtain our approval in the form of a statement of authorization before operating any charter trips to the United States (*see* Special Condition).

such operations by Venezuela. With respect to Aeropostal's concerns on the holding out matter, in the circumstances presented and taking into account the record before us, we do not find a persuasive basis to withhold action on Avior's application. We will, however, refer this matter to the Assistant General Counsel for Aviation Enforcement and Proceedings for such action as is deemed appropriate.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

X Standard exemption conditions (attached)

X Special condition: In the conduct of the services authorized, Avior shall use only aircraft wet-leased from a duly authorized and properly supervised U.S. or foreign air carrier that receives requisite authority under the provisions of 14 CFR 212 of the Department's regulations.

X Special condition: Avior shall not perform any Third or Fourth Freedom charters unless specific authority in the form of a statement of authorization for such charter(s) has been granted by the Department. Avior shall file applications for such statements of authorization at least 30 days before the charters involved, pursuant to the procedures set forth in 14 CFR 212.5; *provided* that applications involving all-cargo charters may be filed up to ten (10) calendar days before the flights.

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).